

**SERVICE AGREEMENT FOR TRANSIT ADVERTISING SERVICES
BETWEEN HOUCK MOTOR COACH ADVERTISING, INC.
AND THE CITY OF LINCOLN, NEBRASKA D/B/A STARTRAN**

THIS AGREEMENT is entered into as of the 15th day of April, 2002, by and between the City of Lincoln, Nebraska, a municipal corporation d/b/a StarTran (Hereinafter referred to as "StarTran") and HOUCK MOTOR COACH ADVERTISING, INC., 1133 Roselawn Avenue West, Roseville, MN 55113 (HEREINAFTER REFERRED TO AS "Contractor").

WHEREAS, StarTran currently owns and operates certain buses in the Lincoln Metropolitan area which include areas commonly used for advertising and advertisements; and

WHEREAS, such transit advertising program will increase revenues to StarTran in order to permit it to facilitate the task of providing and improving quality public mass transportation.

NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

**I.
PERFORMANCE**

The Contractor will perform all work, furnish all labor, necessary supplies, supervision, organization, and other items of work and costs necessary for the proper execution of the services described in the "Request for Proposal Spec. No. 01-180, Transit Advertising Services for StarTran"

Contractor agrees to comply with all applicable provisions and the most recent amendments of federal, state and local laws, regulations, and Federal Transit Administration directives.

The Contractor guarantees minimum annual payments for each year of the Contract to StarTran as follows:

First year of Contract -Contract will pay to StarTran, for the first 12 months only, fifty-one percent (51%) of the gross advertising revenue. Contractor will assume servicing and billing all existing contracts. Fifteen percent (15%) will be deducted from the gross amount of all pre-existing contracts to StarTran and StarTran shall receive fifty-one (51%) of the remainder for the one-year period. The income from pre-paid painted bus contracts will remain the sole and exclusive property of StarTran.

Second Year of Contract -The greater of Forty-two thousand (\$42,000.00) or fifty-one percent (51%) of the gross revenue less an advertising agency discount of 15 %, when applicable.

Third year of Contract -The greater of Forty -Three Thousand Dollars \$43,000.00 or fifty one (51 %) of the gross revenue less an advertising agency discount of (15%) when applicable.

Contractor will remit to StarTran by the fifteenth of each month the greater of the revenue collected less authorized deductions or one-twelfth of the yearly guarantee.

The Contractor's monthly payment to StarTran can fall below the Three Thousand Four Hundred Sixteen and 66/100ths Dollars (\$3,416.66) average guaranteed monthly payment as long as the Contractor is meeting or exceeding its annual Forty-One Thousand (\$41,000.00) guarantee. Any overages or deficits will be made up by either party at the end of the 12- month contract period. Each remittance shall be accompanied by a detailed statement of the receipts received. To insure payments to StarTran, Contractor will maintain a bond in the amount of no less than Ten thousand \$10,000.00 payable to the City of Lincoln. StarTran shall provide and install all needed frames for all buses in its fleet.

In addition, Contractor will be required to obtain and maintain a payment bond or letter of credit in a minimum amount of Five Thousand Dollars (\$5,000.00) to cover work on StarTran buses. Such bond or letter of credit will be payable to the City of Lincoln in a form approved by the City Attorney. In the alternative, the Contractor may deposit with the City a certificate of deposit in the amount of Five Thousand Dollars (\$5,000.00) payable to the City or the

the Contractor to be held by the City in accordance with the terms and conditions of the Security Agreement. No interest shall be paid by the City on the amount retained and the retainer shall be released less deductions thirty (30) days after the termination of the Agreement.

II.

CONTRACTOR'S EXCLUSIVE PRIVILEGE TO PLACE ADVERTISING

StarTran shall make available certain interior and exterior spaces on its buses as described below for the purpose of permitting Contractor to place advertising displays. Such advertising shall be sold by Contractor exclusively, subject to the terms and conditions of this agreement.

StarTran will have 64 active buses for the purpose of interior and exterior advertising, including 55 full-size buses and 9 Handi-Vans.

Interior space is available for 1000+ 11" X 28" ads on 55 full-size buses.

The vehicle roster is listed below:

- A. **Full-size Coaches:**
 - 96" x 35' 1987 Flxible - 5
 - 96" x 35' 1988 Flxible - 7
 - 96" x 35' 1989 Flxible - 5
 - 102" x 35' 1986 Flxible - 12
 - 102" x 35' 1991 Gillig - 7
 - 102" x 35' 1993 Flxible - 4
 - 102" x 35' 1997 Gillig - 15

- B. **Handi-Vans:**
 - 1993 Ford Eldorado - 1
 - 1995 Ford Champion - 7
 - 1997 Ford Goshen - 1

Available advertisement space locations and sizes is as follows:

- A. **Full-size Coaches (When not used as painted buses):**
 - Street: 30" x 144", vinyl
 - Curb: 30" x 88", vinyl
 - 21" x 44", vinyl
 - Tail: 21" x 72", vinyl
 - Head: 11" x 42", vinyl
 - 21" x 44", vinyl

- B. **Handi-Vans:**
 - Street: vinyl
 - Curb: vinyl
 - Tail: vinyl, 21" x 44"
 - Head: vinyl

Contractor is responsible for clarifying any questions as to available buses and advertising space. Vinyl signs may be used in lieu of framed advertising signs in appropriate areas.

Fifteen (15) full size active buses and up to 9 handi-vans are available for a totally

Painted bus program.

Notwithstanding the expectation that the above-referenced number of buses shall be available, the City reserves the right at any time to reduce the size of its fleet or the type of the buses provided for any reason.

Contractor shall be granted the exclusive right to sell all available advertising space including space on new or different dimensioned buses as the same from time to time may be acquired by the City of Lincoln.

III. ADVERTISING GUIDELINES

The following types of advertising shall not be accepted by the Contractor for placement on either the interior or exterior of StarTran buses.

- A. Any advertising prohibited by federal, state, or local law.
- B. Feminine hygiene products or contraceptives of any kind or nature.
- C. Advertisements of a sexually explicit nature or advertisements which advertise shows, movies, pictures, books, or other materials, exhibitions, or performances of a sexually explicit nature.
- D. Advertising copy that is false, misleading, deceptive, and/or offensive to the moral standards of the community, or contrary to good taste.
- E. Advertising copy which is contrary to the best interest of the transit system or which may result in public criticism of the transit system or transit advertising.
- F. Advertising which could reasonably be deemed to be slanderous or libelous, or advertising which is directed at a particular individual, group or organization, or advertising of a politically controversial nature.
- G. Advertising of or relating to beer, wine, or alcoholic liquors or to any tobacco products.
- H. Advertising by or on behalf of any candidate for political office, or relating to any ballot issue, or relating to any other issue of a political nature whereby the advertiser attempts to influence public opinion.
- I. Advertising which appears as if StarTran or the City of Lincoln endorses or approves in any way of the advertising itself or of any subject of such advertisements.

All copy, artwork, and advertising contracts may be forwarded to the Transit Manager in advance of placement on buses, and artwork and material shall be of acceptable quality. All advertising copy will contain the following notice: "Paid advertisement".

All interior and exterior advertising shall be maintained in neat and proper condition.

Contractor will keep on file with StarTran a current accurate advertising rate schedule at all times.

IV. COMPENSATION PROCEDURES

It shall be the responsibility of Contractor to collect and retain all money and compensation paid for any and all advertising on said buses.

Contractor and its employees or representatives shall have the right to enter and ride at no charge said motor buses for the purpose of placing, renewing, changing, or maintaining in a neat and proper condition all advertisements in the motor buses.

If, during this agreement, the amount of bus service based on miles of operation per day or the number of buses in daily operation shall decrease by ten percent (10%) or more, or buses are placed in operation that decrease the sign size by ten percent (10%) or more, then Contractor shall have option of reducing its payments to StarTran by a like percentage, terminating or renegotiating this Agreement by giving StarTran thirty (30) days written notice. If Contractor fails to pay any of said monthly installments, then StarTran, at its option, may terminate this Agreement by giving thirty (30) days written notice to Contractor.

V. **USE OF SPACE**

The Contractor shall grant the City of Lincoln the right to use available advertising space that has not been sold, and until such time as the space is sold, the Contractor shall place or remove such signs provided by the City to the Contractor without charge. Advertising may be placed by the City offices listed in Schedule "A" which is attached to this contract and made a part hereof as if set out fully.

StarTran reserves the right to arrange and utilize painted buses up to Ten Thousand Dollars (\$10,000.00) per contract year for media trade-off or other uses for StarTran's own promotional use. The \$10,000.00 amount shall be calculated according to Contractor's current advertising rates at the time of StarTran's use.

The Contractor may, subject to space allowed for sold advertising and the other uses provided in this section, place self-promotional ads related specifically to promoting transit advertising on StarTran buses.

VI. **CONFLICT OF INTEREST**

No elected official, officer, or employee of the City of Lincoln shall, during his or her tenure, or for one (1) year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

VII. **ASSIGNMENT AND DELEGATION**

The Contractor shall neither assign any interest in this Agreement, nor delegate any

duty arising under this Agreement without the prior written consent of StarTran thereto; provided, however, that claims for money due or to become due to Contractor from StarTran under this Agreement may be assigned without such approval. Notice of any such assignment or transfer shall be furnished promptly to StarTran.

VIII. INDEPENDENT CONTRACTOR

It is agreed that StarTran is interested only in the results obtained from the Agreement and the Contractor shall perform as an independent contractor with the sole control of the manner and means of performing the services required under this Agreement. Contractor shall complete this Agreement according to its own means and methods of work, which shall be in the exclusive charge and control of the Contractor. Contractor is, for all purposes arising out of this Agreement, an independent contractor, and it shall not be deemed an employee of StarTran or the City of Lincoln. It is expressly understood and agreed that Contractor, its officers, agents and employees shall in no event be entitled to any benefits which StarTran or City employees are entitled including, but not limited to, overtime, retirement benefits, workers' compensation benefits, and injury leave or other benefits. Further, it is expressly understood that the Contractor, its officers, agents, or employees are acting on their own behalf and are acting without supervision or approval from StarTran or the City of Lincoln.

IX. INDEMNITY

Copyrights, Royalties and Patents. The Contractor shall defend and hold StarTran harmless for any suits or claims for infringement of patent, copyright or other intangible rights in any way related to this Agreement.

Hold Harmless. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless StarTran, its agents, and employees from and against claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of, resulting from, or related to the Agreement that results in any claim for damage whatsoever including, without limitation, any bodily injury, sickness, disease, death, or injury to or destruction of tangible or intangible property, including the loss of use resulting therefrom that is caused in whole or in part by the Contractor or anyone directly or indirectly employed by the Contractor, or anyone for whose acts, any of them, may be liable. This section shall not require the Contractor to indemnify or hold harmless StarTran for any losses, claims,

damages, and expenses arising out of or resulting from the sole negligence of StarTran. In addition, StarTran shall not be responsible nor be held liable for any damage consequent upon the use, misuse, or failure of any StarTran equipment, material or supplies used by the Contractor or anyone directly or indirectly employed by the Contractor. The acceptance or use of any such equipment material, or supplies, including that supplied by StarTran, shall be construed to mean that the Contractor accepts the full responsibility for and in addition to paying for any loss or damage to StarTran supplied equipment, material or supplies, Contractor agrees to exonerate, indemnify, and save harmless StarTran from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, material, or supplies, whether such damage be to the employee or property of Contractor, StarTran or other persons even though such equipment may be furnished, rented, or loaned to the Contractor by StarTran.

X. INSURANCE

The Contractor shall purchase such insurance as shall protect the Contractor from claims which may arise out of or result from the Contractor's operations under the Agreement for which the Contractor may be legally liable, whether such operations be by the Contractor itself or by anyone directly or indirectly employed by the Contractor or by anyone for whose acts, any of them, may be liable. The insurance required shall be written for not less than the following amounts:

| | | |
|-----------------------------------|---|--|
| Workers' Compensation | - | Statutory |
| Commercial General Liability | | |
| Bodily Injury and Property Damage | - | 1,000,000 combined single Limit each occurrence |
| | - | 2,000,000 Aggregate |
| Property Damage Liability | - | 100,000 per occurrence |
| Employer's Liability | - | 100,000 per occurrence |

All liability insurance policies shall be written on an occurrence basis only, shall be endorsed to add the City of Lincoln d/b/a StarTran, its official agents, and employees as an additional insured as related to this Agreement and shall be maintained without interruption from the date of the commencement of the work until the date of termination. All insurance coverages are to be placed with an insurance company authorized to do business in the State of Nebraska and shall be placed with an insurer that has an AM best rating of not less than A:VII, unless specific written approval has been granted by StarTran to deviate from this

requirement. The Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this section and such insurance has been approved by the City Attorney for the City of Lincoln. All certificates of insurance evidencing such coverages shall be filed with the Agreement showing the specific limits of insurance coverage required and any deductibles required. Such certificate shall specifically state the insurance policies are to be endorsed to require the insured to provide StarTran thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance coverage.

**XI.
NOTICE**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by Certified Mail, postage prepaid, to the following addresses:

| | |
|--|---|
| StarTran | Contractor |
| Transit Manager StarTran 710 "J" Street Lincoln, NE 68508 | Houck Motor Coach Advertising 1133 Roselawn Ave. West Roseville, MN |

**XII.
COMPLIANCE WITH LAW**

In the performance of this Agreement, Contractor agrees that it shall comply with all federal, state and local laws, ordinances, rules, and regulations as may be applicable to the operations engaged in hereunder.

**XIII.
REPRESENTATION TO BE MAINTAINED BY CONTRACTOR**

Contractor shall provide to the Transit Manager at StarTran an address and a cost free telephone number where a representative of the Contractor will be available and capable of servicing accounts during normal business hours. In the event StarTran personnel are required by non-availability of Contractor to assist advertising customers, all costs and expenses of StarTran related thereto shall be charged to Contractor and subtracted from the amount to be paid at the time of the next monthly. Additionally, Contractor or its representatives agree to make themselves available to representatives of StarTran as requested to assist in resolving questions regarding billings and to provide information and reports as to the status and prospects for advertising on StarTran vehicles.

**XIV.
EMPLOYMENT REGULATIONS**

A. Fair Employment Practices. The Contractor services under this Agreement shall comply with Federal Executive Order No. 11246, as amended, entitled "Equal Employment Opportunity," as supplemented in the Dept. of Labor Regulations (41 C.F.R. ¶ 60), and the Contractor or any subcontractor shall not discriminate against any employee or any applicant for employment, to be employed in the performance of this agreement, with respect to his compensation, terms, advancement potential, conditions, or privileges of employment because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status, pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat § 48-1122 (Reissue 1993, as amended).

B. Unemployment Compensation. The Contractor, where applicable, shall be required to pay to the Unemployment Compensation Fund of the State of Nebraska under the provisions of the Nebraska Employment Security Law, Nebr. Rev. Stat. §§ 48-601, et Seq. (Reissue 1993, as amended) on wages paid to individuals employed in the performance of this Agreement.

XV. TERM AND TERMINATION

A. The term of this Agreement shall be for a period of one (1) year commencing _____ and ending _____, unless sooner terminated as hereafter provided. This contract may be extended for no more than two 1-year terms for the same term and conditions as set forth in the original proposal unless mutually agreed upon otherwise.

B. If Contractor fails or neglects to do or perform or observe any of the conditions or covenants contained herein on its part to be kept and performed, and such failure or neglect shall continue for a period of not less than thirty (30) days after StarTran has notified Contractor in writing of Contractor's default hereunder and Contractor has failed to correct such default within said thirty (30) days, StarTran may, at its option, immediately or at any time thereafter declare this Agreement terminated and of no further force and effect.

C. In the event of failure of the Contractor to meet the minimum gross sales guarantees as required by Paragraph I hereof, either party may terminate this Agreement by notice in writing to the other party, which termination shall be effective immediately upon receipt of such notice by the other party.

D. If Contractor shall be declared to be bankrupt or insolvent according to law,

or if any assignment of its property shall be made for the benefit of creditors, then StarTran may, at its option, immediately or at any time thereafter, without notice, declare this Agreement terminated and of no further force and effect.

If this Agreement expires or is terminated for any reason Contractor shall be reimbursed fifteen percent (15%) of the gross billing for any existing and continuing advertising contracts for twelve months after the date of expiration or termination. For purposes of this section, the Mayor shall be the official authorized to cause the termination for StarTran pursuant to this section.

XVI.
AUDIT AND INSPECTION OF RECORDS

The Contractor and StarTran agree that the Comptroller General of the United States, or any of his/her duly authorized representatives, the Transit Manager, or the City Finance Director, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts with regard to this contract. The Contractor agrees to maintain all required records for at least three years (3) after StarTran makes final payments and all other pending matters are closed. Further, Contractor shall supply StarTran with monthly activity reports regarding this Agreement and monthly status reports regarding the contract guarantees.

XVII.
ENTIRE AGREEMENT

The Agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to the subject matter.

XVIII.
REPRESENTATIONS

No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Agreement. Neither party has relied on any verbal representations, agreements, or understandings not expressly set forth in this Agreement.

**XIX.
NEBRASKA LAW**

This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and in Nebraska courts.

**XX.
SEVERABLE PROVISIONS**

Each provision, section, sentence, clause, phrase and word of the Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not effect the validity of the remainder of this Agreement.

XXI.

This Agreement shall be binding upon and insure to the benefits of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

**CITY OF LINCOLN, NEBRASKA
A Municipal Corporation**

City Clerk

Mayor, City of Lincoln

**Houck Motor Coach Advertising
Inc.**

Witness

By: _____
President

SCHEDULE "A"

- (A) Finance Department
- (B) Parks and Recreation Department

- (C) Personnel Department
- (D) Planning Department
- (E) Department of Public Works & Utilities
- (F) Law Department
- (G) Urban Development
- (H) Police Department
- (I) Fire Department
- (J) Department of Building and Safety
- (K) Mayor and Mayor's Departments
- (L) City Council and Council Departments
- (M) Senior Center
- (N) Airport Authority
- (O) Citizen Information Center
- (P) Credit Union
- (Q) Civil Defense
- (R) Information Services
- (S) Economic Development
- (T) Lincoln Electric System
- (U) City Clerk
- (V) City Treasurer
- (W) Emergency Communications
- (X) Pershing Auditorium
- (Y) Libraries
- (Z) Lincoln-Lancaster County Health Department
- (aa) Lincoln General Hospital
- (bb) Commission on Human Rights
- (cc) Training Resources Center
- (dd) Lincoln Area Agency on Aging
- (ee) Lincoln-Lancaster Women's Commission